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TECHNOLOGY CENTER R3700

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Examiner: Nathan Jeffrey Newhouse

Group Art Unit: 3727

In re application of:

CARLOS ORLANDO
VILACHA ZANONI ET AL.

Serial No.: 09/745,098

Filed: December 20, 2000

**CROWN CLOSURE HAVING A
REDUCED RADIUS AND METHOD
OF MANUFACTURE**

Attorney Docket No. 286765-00001

TRANSMITTAL LETTER

March 13, 2003

Assistant Commissioner for Patents
BOX AF
Washington, D.C. 20231

Dear Sir:

In response to the March 3, 2003 office communication, please find enclosed
an Amended Appeal Brief (three originals).

Respectfully submitted,

David C. Jenkins
Registration No. 42,691
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566-1253
Attorney for Appellants



AF/372

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	Filing Date	12/20/2000
	First Named Inventor	Carlos Orlando Vilacha Zanoni
	Group Art Unit	3727
	Examiner Name	Nathan Jeffrey Newhouse
Total Number of Pages in This Submission	Attorney Docket Number	286765-00001

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Firm or Individual name	David C. Jenkins Eckert Seamans Cherin & Mellott, LLC
Signature	
Date	March 13, 2003

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: March 13, 2003			
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**CROWN CLOSURE HAVING A
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Attorney Docket No. 286765-00001

AMENDED APPEAL BRIEF

March 13, 2003

Assistant Commissioner for Patents
BOX AF
Washington, D.C. 20231

Dear Sir:

This is an Appeal from the decision of the Examiner dated August 23, 2002 finally rejecting claims 1-16. The claims are set forth in Appendix A, which is attached hereto. Due to the specific nature of the issues involved in this Appeal, an Oral Hearing is not deemed necessary and is not requested.

Real Party In Interest

The real parties in interest are the inventors, Carlos Orlando Vilacha Zanoni and Klaus Uhlig Peterssen.

Related Appeals and Interferences:

There are no other appeals or interferences known to Appellants or to Appellants' legal representative which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

Status of the Amendments

There are currently no amendments to the pending claims. The claims as they stand on Appeal are contained in the Appendix A to this Brief.

Status of the Claims

Claims 1-16 remain pending in this application.

Claims 1-12 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Leenaards*, U.S. Patent No. 3,827,549.

Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Leenaards* U.S. Patent No. 3,827,549 in view of *Ferngren*, U.S. Patent No. 2,099,056.

Claims 14-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Leenaards*, U.S. Patent No. 3,827,549 in view of *Myer*, U.S. Patent Number 3,497,098.

The Invention

This invention relates to a cap, generally known as “crown cork” or a “crown closure,” used for sealing mainly glass bottles with carbonated (beer, soft drinks, etc) and non-carbonated beverages (juices, sauces, etc). Prior art crown closures have a shell with a generally flat disk, a curved portion, and a depending skirt. When attached to a bottle, the skirt and the curved portion were crimped to conform to the contour of a bottle mouth. The disadvantage of the prior art crown closures was that the curved portion did not conform to the shape of the bottle prior to crimping. Because of this, prior art crown closures tended to slip during the crimping procedure.

This invention overcomes the disadvantage of the prior art by providing a crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle. Thus, during the crimping procedure, the crown closure is less likely to slip.

Issues Presented

1. Whether the Appellants' invention as claimed in claims 1-12 are anticipated by *Leenaards*, U.S. Patent No. 3,827,549.
2. Whether the Appellants' invention as claimed in claim 13 is unpatentable over *Leenaards*, U.S. Patent No. 3,827,549 in view of *Ferngren*, U.S. Patent No. 2,099,056.
3. Whether the Appellants' invention as claimed in claims 14-16 are unpatentable over *Leenaards*, U.S. Patent No. 3,827,594 in view of *Myer*, U.S. Patent Number 3,497,098.

Grouping of Claims

Claims 1, 13, and 14 each stand separately. Claims 2-12 stand or fall with claim 1. Claims 15 and 16 stand or fall with claim 14.

Argument

Claims 1-12; Rejected under 35 U.S.C. §102(b)

Claims 1-12 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Leenaards*, U.S. Pat. No. 3,827,594. *Leenaards* discloses a crown closure that is shaped to accommodate a seal that engages the lateral face of the bottle to which the closure is attached. That is, the seal is located between the curved portion of the crown closure and the outer side of the bottle. As such, the curved portion of the shell cannot be structured to have the same shape as the container to which the closure will be attached as the curved portion must be shaped to provide a space for the seal. This space is identified by reference number 18 on figure 2 and described at Col. 4, lines 3-4. *Leenaards* notes that *after* deformation, i.e. the crimping procedure, the closure is shaped to the mouth of the container.

The Examiner states that, "Leenaards, as shown in figures 2 and 5, teaches the crown closure having a curved portion that is the same shape as the mouth contour of the bottle prior to crimping." Appellants disagree. As shown in figures 2 and 5, the radius of curvature for the outer edge of the mouth is much smaller than the radius of curvature of the crown. It is this difference in the curvature radii that creates the

space between the mouth and the crown identified by the reference number 18. Additionally, it is this difference in the curvature radii that creates the problem that the present invention overcomes, namely, the crown shifting on the bottle prior to crimping.

With regard the Examiner's statement speculating as to a possible shape for the *Leenaards* crown if the liner were in a different location, Appellants note that the purpose of the *Leenaards* invention is to have the liner at the lateral location. Therefore, speculation as to the shape of crown without the liner in this location is to go beyond what is disclosed in the *Leenaards* reference.

As stated in MPEP §2131:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.... The identical invention must be shown in as complete detail as is contained in the ... claim.

Id., citing (*Verdigaal Brothers v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) and *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, (Fed. Cir. 1989)). It is submitted that upon reading the *Leenaards* reference, one skilled in the art would not consider having a crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle.

Claim 13 stands rejected under 35 U.S.C. §103(a)

Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Leenaards* in view of *Ferngren*, U.S. patent No. 2,099,056. *Leenaards* is discussed above. *Ferngren* discloses a flexible plastic cap for a flexible bottle. *Ferngren* does not discuss a crown closure. As crown closures and plastic caps are different types of closures, these references cannot be combined.

Moreover, as stated in, *In re Geiger*, 815 F.2d 686, 2 U.S.P.Q.2d 1276 (Fed. Cir. 1987), "obviousness cannot be established by combining teachings of the prior art to produce the claimed invention, absent some *teaching, suggestion, or incentive* supporting combination." (emphasis added). Put another way, "the mere fact that disclosures or teachings of the prior art *can be* retrospectively combined for the

purpose of evaluating obviousness/nonobviousness issue does not make the combination set forth in the invention obvious, unless the art also suggested the desirability of the combination” *Rite-Hite Corp. v Kelly Co.*, 629 F.Supp. 1042, 231 U.S.P.Q. 161, *aff’d* 819 F.2d 1120, 2 U.S.P.Q.2d 1915 (E.D.Wis.1986) (emphasis added). Similarly, the court in, *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991), stated that “both the suggestion [to make the claimed apparatus] and the reasonable expectation of success must be found in the prior art, not in the applicant’s disclosure.”

With regard to *Leenaards* and *Ferngren*, there is no *teaching, suggestion, or incentive* in either reference to suggest the combination recited by the Examiner. As such, it is not proper for the Examiner to base a rejection under 35 U.S.C. §103(a) on these combination of references.

Claims 14-16 stand rejected under 35 U.S.C. §103(a)

Claims 14-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Leenaards* in view of *Myer*, U.S. patent No. 3,497,098. *Leenaards* is described above. *Myer* discloses a crown closure having a protective skirt. *Myer* further discloses a method of manufacturing the crown closure using a punch press and a blanking die. *Myer* does not, however, disclose the diameter of the blanks used in the die press. Additionally, *Myer* does not discuss any limitation to the extent of the serrations. However, as shown in the figures, the serrations of *Myer* extend into the curved portion of the shell. *Leenaards* discloses that finished crown closures have a skirt diameter of between 20 and 40 mm.

As discussed above in relation to the rejection of claim 13, in order to combine references, there must be some “teaching, suggestion, or incentive supporting combination.” Again, there is no such teaching in these two references. The Examiner has further cited *In re Fine*, 837 F.2d 1071 (Fed Cir. 1988) to support the statement that “obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found in either the references themselves or in the knowledge generally available to one of ordinary skill in the art.” (emphasis

added). In *Fine* the court reversed the §103(a) rejection in dispute after noting that the Examiner made a “bald assertion” that it would have been obvious to combine the prior art. *Id.* at 1074. The court further noted that merely having similar prior art may lead one skilled in the art to try a combination, but that “‘obvious to try’ is not a legitimate test of patentability.” *Id.* at 1075. The court concluded that the, “teachings of references can be combined *only* if there is some suggestion or incentive to do so.” *Id.* (emphasis in original). Here the Examiner has made only a bald assertion that the prior art references can be combined. The Examiner has not shown a “suggestion or incentive to do so.”

1. Whether the Appellants’ invention as claimed in claims 1-12 are anticipated by *Leenaards*, U.S. Patent No. 3,827,549.

Independent claims 1 and 7, and each of the claims that depend therefrom, require a crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle. Because *Leenaards* does not teach, either expressly or inherently, crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle, the reference does not anticipate the invention as recited in claims 1-6 or 7- 12.

2. Whether the Appellants’ invention as claimed in claim 13 is unpatentable over *Leenaards*, U.S. Patent No. 3,827,549 in view of *Ferngren*, U.S. Patent No. 2,099,056.

In this rejection the Examiner has only stated that the cited references can be combined. The references do not have a teaching, suggestion, or incentive supporting such a combination. Nor do the references suggest the desirability of the combination or that such a combination would be a success. As such, these references cannot be combined for the purpose of a rejection under 35 U.S.C. § 103(a) and, the invention as recited in claim 13 is not obvious.

3. Whether the Appellants' invention as claimed in claims 14-16 are unpatentable over *Leenards*, U.S. Patent No. 3,827,594 in view of *Myer*, U.S. Patent Number 3,497,098.

Independent claim 14 recites a method of producing crown closures wherein the blanks used to form the crown closure have a diameter of about 1.4 inches. As these two references cannot be combined and as neither reference individually teaches the use of 1.4 inch diameter blanks, these references cannot suggest the method set forth in claim 14.

Claims 15 and 16, which each depend from claim 14, each further recite that the serrations do not extend into the curved portion of the shell. As *Myer* teaches that the serrations extend into the curved portion of the shell and because these two references cannot be combined, these references cannot suggest the method set forth in claims 15 and 16.

Summary And Conclusion

It is respectfully submitted that claims 1-12 are not anticipated by *Leenaards*. It is further submitted that Claim 13 is patentable over *Leenaards* in view of *Ferngren*. It is further submitted that claims 14-16 are patentable over *Leenards* in view of *Myer*. Therefore, it is respectfully requested that the Board reverse the Examiner's rejections of Claims 1-16 and remand the application to the Examiner for the issuance of a Notice of Allowance.

Respectfully submitted,



David C. Jenkins
Registration No. 42,691
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566-1253
Attorney for Appellants

APPENDIX A

1. A crown closure comprising:
a shell having an inside, a top, a skirt, a curved portion and a plurality of serrations which do not project into said curved portion;
said curved portion disposed between said top and said skirt;
a liner secured to said inside; and
wherein said curved portion is adapted to be the same shape as the mouth contour of a bottle.
2. The crown closure of claim 1 wherein said curved portion has a radius greater than about 1.7 mm.
3. The crown closure of claim 1 wherein said curved portion has a radius of about 0.157 inches (4 mm).
4. The crown closure of claim 1 wherein said shell is manufactured from a blank having a diameter of about 1.4 inches (35.5 mm).
5. The crown closure of claim 1 wherein said shell is formed from a blank having a diameter less than about 1.4446 inches.
6. The crown closure of claim 1 wherein said shell has twenty serrations.
7. A closed container comprising:
a bottle having a mouth;
a crown closure secured over said mouth;
said crown closure comprising:
a shell having an inside, a top, a skirt, a curved portion and a plurality of serrations which do not project into said curved portion;

said curved portion disposed between said top and said skirt;
a liner secured to said inside; and
wherein said curved portion is adapted to be the same shape as the contour of said mouth.

8. The closed container of claim 7 wherein said curved portion has a radius greater than about 1.7 mm.

9. The closed container of claim 7 wherein said curved portion has a radius of about 0.157 inches (4 mm).

10. The closed container of claim 7 wherein said shell is manufactured from a blank, and said blank has a diameter of about 1.4 inches (35.5 mm).

11. The crown closure of claim 7 wherein said shell is formed from a blank having a diameter less than about 1.4446 inches.

12. The closed container of claim 7 wherein said shell has twenty serrations.

13. The closed container of claim 7 wherein:
said bottle mouth includes an upper portion and a lower portion with a fulcrum therebetween; and

said curved portion has a radius that is similar to said upper portion.

14. A method of producing crown closures comprising the steps of:
a) providing a die press;
b) providing metal sheets which may be die pressed into crown closures;
c) using said die press to form blanks having a diameter of about 1.4 inches (35.5 mm); and
d) using said die press to form crown closures using said blanks.

15. The method of claim 14, wherein:

said crown closures include a shell having an inside, a top, a skirt, a curved portion and a plurality of serrations which do not project into said curved portion; and said curved portion has a radius of about 0.157 inches (4 mm).

16. The method of claim 14, wherein:

said crown closures include a shell having an inside, a top, a skirt, a curved portion and a plurality of serrations which do not project into said curved portion; and said curved portion has a radius greater than about 1.7 mm.